IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.429 OF 1992

The State of Maharashtra ...Appellant.

V/s

Akbar Ali Habibali @ Mehate
Age 45 years R/o. Fiden
Beugh, Silver Jublee Bldg.,
1st floor, R. No.9,
Andheri, Bombay -58 ...Respondent.

Mr. D.P. Adsule, APP for the State.

None for the respondent.

CORAM: V.M. KANADE, J.
DATE : 3rd February, 2005

ORAL JUDGMENT:

1. The State has filed this appeal challenging the judgment and order passed by the Metropolitan Magistrate, 35th Court, V.T. (Rly,) Bombay in Criminal Case No. 80/S/81. By the said judgment and order dated 26/3/1992, the Trial Court acquitted the accused of the offence punishable under section 3(a) of the R.P.U.P. Act, 1966.

2. The prosecution case in brief is that five rail pieces were seized from the shop of the accused. The accused could not give satisfactory explanation regarding the possession of the said material. Accordingly, a charge was framed against the accused.

The Trial Court, however, after perusing the evidence on record, gave benefit of doubt to the accused and acquitted him of the offence with which he was charged.

3. I have perused the judgment and order of the Trial Court as also the evidence adduced by the prosecution. It can be seen that there is no evidence brought on record to show that the property which was found with the accused was unlawful. The accused, admittedly, was dealing in scrap material and the Railway Administration had, from time to time, disposed of the scrap material in the open market. The accused produced the receipt in support of his contention that he had purchased the five pieces from the hawker. Thus, in the absence of proof that the seized material was a railway property, no case is made out against the accused. The Judgment and order of the Trial Court is confirmed. Appeal is accordingly dismissed.

V.M. KANADE, J.